

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMTRUST NORTH AMERICA, INC., et al.,

Plaintiffs,

-v-

KF&B, INC.,

Defendant.
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17-cv-5340 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

In an Order dated July 29, 2020 (“July 29, 2020 Order”), the Court set forth the trial procedures it intended to adopt for the remote bench trial of this matter scheduled for September 21, 2020, and invited any party with a suggestion or objection to make it by August 6, 2020. Dkt. No. 150. The parties have now submitted letters making suggestions to certain portions of the procedures. Dkt. Nos. 151, 153, 154. Having considered the parties’ proposals, the Court recognizes that, ordinarily, (1) the party defending against a claim (whether Defendant on Plaintiffs’ claim or Plaintiffs on Defendant’s counterclaim) need not offer testimony in support of its defense until it has heard the testimony and evidence of the proponent of the claim; and (2) the proponent of a claim has an opportunity to offer rebuttal limited to responding to the testimony and evidence of the opponent of the claim. Accordingly, to accommodate those interests within the confines of a remote trial where direct testimony will be taken by declaration, the Court amends the July 29, 2020 Order as set forth below.

1. The July 29, 2020 Order is amended to reflect the following pretrial schedule:

August 31, 2020	Submission of Binder One to the Court (and delivery of Binder One to the parties) containing the direct testimony
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and accompanying exhibits of any witness within a party's control that such party intends to offer in its case-in-chief whether in support of a claim or counterclaim or in defense to a claim or counterclaim.

- September 8, 2020 Motions in limine and motions to strike declarations.
- Deadline for a party not bearing the burden of proof (*e.g.*, Defendant on Plaintiffs' claims and Plaintiffs on Defendant's counterclaims) to move to supplement, on good cause shown, the declaration of a witness it intends to offer in defense in its case in chief in response to the declarations of the party bearing the burden of proof.
- September 14, 2020 Submission of proposed findings of fact and conclusions of law.
- Opposition briefs to motions in limine and motions to strike.
- Opposition briefs to motions to supplement the testimony of a witness declaration.
- Deadline for the proponent of a claim (whether Plaintiffs on a claim or Defendant on a counterclaim) to submit rebuttal declarations and exhibits limited to rebutting the evidence offered by the opponent of a claim on a claim for which the proponent bears the burden of proof.
- Binder Two submission to the Court with respect to the testimony offered by either side in its case in chief.
- List of attorneys and witnesses emailed to Court.
- Demonstrative exhibits submission to the Court.
- September 15, 2020 Deadline for pretrial technology testing.
- September 17, 2020 Final pretrial conference.
- September 21, 2020 Binder Two delivery to witness and opposing counsel.
- Submission to the Court of binders of cross-examination material with respect to rebuttal declarations ("Binder Three").
- Trial begins

2. Paragraph 5 of the July 29, 2020 Order is amended by adding the language in bold as follows:

Remote Witness Testimony. Rule 43(a) of the Federal Rules of Civil Procedure provides that, for “good cause in compelling circumstances,” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Having found that good cause in compelling circumstances exist here due to the COVID-19 pandemic, and the parties having consented, any witness called to testify at the trial shall testify by contemporaneous transmission from a different location than the Courtroom (“Remote Witness”). All Remote Witnesses shall be sworn in over remote means, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn in by the Court deputy in person in open court at the courthouse. In the event that there is an error or malfunction with remote technology, the testimony shall proceed by dial-in by using a telephone number provided by the Court. The party offering the Remote Witness shall be responsible for ensuring that the remote technology and *all exhibits from all parties* are supplied to the Remote Witness in hard copy prior to **the witness’s testimony at trial**. During the testimony, no person other than counsel may be present in the room from which any Remote Witness who is a fact witness will testify during that witness’s testimony. **While the Remote Witness is testifying, he or she may not access or otherwise have within sight or reach in the room from which the Remote Witness is testifying any documents except Binder One and Binder Two and, in the case of rebuttal testimony, Binder Three.** Remote Witnesses other than expert witnesses proffered by each side shall utilize the provided link only during the time they are testifying. Upon the conclusion of his or her testimony, the witness shall disconnect from the link.

There being no other objections by the parties, the July 29, 2020 Order shall be deemed final except as amended by this Order.

SO ORDERED.

Dated: August 10, 2020
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', is written over a horizontal line.

LEWIS J. LIMAN
United States District Judge